U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAY 15 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a mathematics teacher at Maryland. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and copies of printouts of standardized test data relating to in Maryland.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on January 24, 2012. In an accompanying statement, counsel stated:

> [The petitioner's] petition for waiver of the labor certification is premised on his Doctor of Science Degree in Mathematics, over sixteen (16) years of dedicated and progressive teaching experience exclusively in Mathematics . . . , the major awards and honors accorded him, and most especially the treatises and authorships which were published in educational books and professional journals in the United States of America, Japan and Germany.

Academic degrees, experience and institutional recognition (such as awards) are all elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B) and (F),

respectively. Particularly significant awards may serve as evidence of the petitioner's impact and influence on his field, but the petitioner did not demonstrate that the awards he has received have more than local significance. Counsel listed 14 exhibits under the heading "Awards and Honors." A "Narrative Resume" submitted with the petition identifies what the petitioner appears to consider the most significant among those awards:

> He . . . received a Certificate of Accomplishment for attending Evening Seminars sponsored by the In June 2009, he also received a Recognition of Excellence certificate from Praxis for being in the top 15% of test takers. Finally, he received a Principal's Award for Excellence during the school year 2008-2009.

"Attending Evening Seminars" is a way to increase one's professional knowledge and improve as a teacher, but there is nothing inherent in this activity to establish eligibility for the waiver. An otherwise ineligible teacher could not qualify for the waiver merely by attending such seminars.

An "ETS Recognition of Excellence" certificate acknowledged the petitioner's "outstanding score on The Praxis Series Mathematics: Content Knowledge . . . that ranks within the top 15% of all test takers who took this assessment in previous years." The petitioner did not submit background documentation to establish the significance of this result. A high test score is not, on its face, an influential achievement in the field of education. Rather, it demonstrates a good grasp of subject knowledge.

The phrase "Principal's Award for Excellence" appears on a pre-printed form from The certificate indicates that the petitioner received the award "For Completion of Second Year Teaching."

Other certificates acknowledged participation in one-time events, such as judging math competitions, as well as the petitioner's efforts as a lecturer. These latter materials date from when the petitioner was on the faculty of The record does not indicate that the petitioner continues to perform similar activities in the United States. The petitioner's past duties on a university's faculty are not necessarily a reliable guide for what the petitioner will do in his current position as a high school teacher.

The petitioner's "Narrative Resume" described his activities in Baltimore:

> As a teacher, [the petitioner] shares his ideas on how to improve student achievement with his colleagues and volunteers in after school activities by offering free tutorials and coach classes. He also constantly communicates with parents on their children's progress in school. He also volunteers in programs promoting the cultural exchange between the US and the Philippines through the in Maryland,
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> As a professional, [the petitioner] participated and volunteered in various organizations. . . . He also participated in College Board sponsored seminars for Advance Placement and attended the Activate Workshop sponsored by the Computer Science Department of

He also acted as lecturer in math forums and judge in mathematical competitions.

Under the heading "Research and Publications," the petitioner submitted copies of eight scholarly papers that the petitioner wrote between 1995 and 2003, while he was on the faculty of Exhibits in a section of the record headed "Talks as a Resource Speaker" date from the same period. The petitioner did not submit objective documentation (such as citation data) to show the impact of the petitioner's research papers. Furthermore, the papers do not concern mathematics education. Rather, they focus on advanced mathematical topics such as that appear to be well beyond high school-level math. There is no evidence that the petitioner continues to publish research.

The petitioner submitted 12 witness letters from faculty, administrators, former students and parents of students at and other schools where the petitioner has taught. These letters praised the petitioner's abilities as an educator, but did not indicate that the petitioner's work has had, or will continue to have an impact outside of the classrooms and local school systems that have employed him.

Two other letters incorporated into the record as "Testimonials" appear, instead, to be "form" letters sent to multiple recipients. One of these letters, undated and with no personalized salutation, appears to be a cover letter that accompanied the certificate the petitioner received for his Praxis test score. The other, dated May 3, 2011, is from The letter reflected on the 2010-2011 school year, and contained no specific information about the petitioner. The letter is addressed to the petitioner, but his name is visibly out of alignment with the salutation "Dear." This anomaly, together with the lack of personalized content, indicates that the mayor's office issued a "form" letter to multiple recipients within Baltimore's public school teachers.

The director issued a request for evidence on June 5, 2012, stating that the submitted evidence failed "to establish that the petitioner's work as a Mathematics Teacher has had an impact on the field as a whole and that his teaching techniques are been [*sic*] used by other schools other than his employer's organization."

Much of the petitioner's response to the request for evidence concerns the intrinsic merit of mathematics education, which does not distinguish the petitioner from others in the same field. Current law creates no blanket waiver for math teachers, and therefore general assertions about the value of the profession cannot establish eligibility for the waiver.

Counsel stated:

> Since a 'National Mathematics Teacher' is not even a real concept but more of metaphysical cognition [*sic*], undersigned wishes to once again posit a realistic proposition upon which to establish that the self-petitioner's contributions will impart national-level benefits.

> Even the curricula used by each state education department in the United States vary from each other.
>
> In other words, since not all NIW cases are based on prevailing Acts of United States Congress, it is but harmless to assert that if an NIW Petition is made with premise on some prevailing Acts of United States Congress, that by itself renders the proposed employment national in scope."

Counsel contended that the No Child Left Behind Act (NCLBA) and other legislation and policy initiatives establish that Congress and the executive branch have put special emphasis on education, especially in math and related subject areas. This assertion does not succeed, because all employment-based immigrant classifications are based on "Acts of United States Congress," as is the statutory job offer requirement. There is no basis to conclude that Congress, by mentioning a given occupation in a particular piece of legislation, exempted aliens in that occupation from the job offer requirement.

Counsel contended that the petitioner's high level of expertise in his field makes him especially valuable to the United States. Copies of the petitioner's annual evaluations from 2009, 2010, 2011 and 2012 show that his employers rated him "Satisfactory," the middle ranking between "Proficient" and "Unsatisfactory." The "Satisfactory" rating is clearly not an unfavorable one, but neither does it support counsel's claim that the petitioner strongly stands out among his peers.

In his own accompanying statement, the petitioner stated: "As a math teacher, I am part in [*sic*] shaping the fabric of our society. I am in the frontline in guiding, directing, and molding America's future." These are general statements about teaching in general. Regarding his own individual qualifications, the petitioner stated: "As a teacher, I have contributed in sending many African Americans students [*sic*] residing in [redacted] to various colleges and universities." The petitioner then cited general statistics that generally correlate prosperity to education. The petitioner submitted a copy of a report stating:

> Among the 4,017 graduates who received regular diplomas in the [redacted] Schools Class of 2008, 1,875 (or 46.7%) enrolled in college in the fall after graduation.
>
> Among the 4,286 graduates who received regular diplomas in the City Schools Class of 2009, 2,035 (or 47.5%) enrolled in college in the fall after graduation.

The petitioner submitted no evidence to show that he was especially responsible for the slight increase documented in the report.

The petitioner observed that he holds a master's degree and a doctorate in mathematics, graduating Magna Cum Laude from [redacted] Academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements which establish the alien's ability to benefit the national interest. *NYSDOT*, 22 I&N Dec. 219, n.6.

The petitioner also stated: "Some individuals and schools are pursuing my research on Relative Difference Sets and use my research as a bibliographical reference." As an example, the petitioner submitted the abstract from a 2010 master's thesis from The abstract reads, in part:

> Though the non-existence in the abelian p-groups was already established in the study of and in the metacyclic group through [the petitioner's] work, the result about the modular p-group is new. [The petitioner] attempted to prove the latter in his paper, but his proof is not valid because of a flaw in his computations.

The thesis clearly refers to the petitioner's work, but it is equally evident that the reference is not a favorable one that reflects the petitioner's influence on mathematical research.

The petitioner showed that citations to his work also appear in two other articles, both published in *Designs, Codes and Cryptography* - one in 2005, the other in 2006. One of the authors of the 2006 article is who was the petitioner's collaborator and a co-author of the cited paper. The three documented citations – one a self-citation, and another an unfavorable one, do not demonstrate that the petitioner's published work has been particularly influential in the field.

Furthermore, any influence from the petitioner's research work offers prospective benefit to the United States only if the petitioner is still performing such research. Referring to himself in the third person, the petitioner stated that he "still continues with his research on Difference Sets and Relative Difference Sets through collaboration with his advisor and others who are working in Combinatorics and Algebra." To support this claim, the petitioner cited "Collaborative Letters." The petitioner submitted printouts of four electronic mail messages. Two are dated 2000, and a third is dated 2002. The most recent communication is dated July 24, 2006, six years before the petitioner submitted it. A document of that age cannot establish that the petitioner "still continues with his research." Furthermore, the 2006 message (from did not refer to any ongoing research. Rather, the petitioner's collaborator stated: "I am very glad to know that you have always been interested in difference sets and number theory. I hope I will have joint works again with you in the future." The record contains no evidence that any subsequent collaboration took place. This vague, six-year-old message does not support the assertion that the petitioner continues to perform research.

The director denied the petition on November 30, 2012. The director listed several of the petitioner's evidentiary exhibits and quoted several witness letters, but found that the evidence did not show "how the benefits of his employment as a teacher in a Maryland school will be national in scope." The director also concluded that many of the petitioner's "assertions . . . are unfounded."

On appeal, the petitioner submitted Maryland School Assessment results for The petitioner does not claim to have taught in either of those jurisdictions. Counsel does not explain the relevance of these exhibits. Counsel's appellate brief contains numerous unexplained references to "

Counsel's appellate brief includes a variation on the opening passage from the introductory statement that accompanied the initial submission:

> [The petitioner] is a 'Highly Qualified Teacher' with a Doctor's Degree in Mathematics and over sixteen (16) years of dedicated, progressive teaching experience exclusively in Mathematics . . . , the major awards and recognitions received by him, and most especially the contribution in Mathematics education which he selflessly shares to [*sic*] everyone through numerous scholarly published materials from the United States, Germany, Japan, Australia and the Philippines.

The record does not show that the petitioner has published anything on "Mathematics education"; his documented publications all concern a highly specialized area of mathematical theory. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel notes that Congress passed the NCLBA three years after the issuance of NYSDOT as a precedent decision, and claims that "the United States Congress, with the enactment of the NCLB Act, has preempted the USCIS with respect to the parameters that should guide its determination" regarding the waiver claim. Counsel, however, identifies no special legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them.

The assertion that the NCLBA modified or superseded *NYSDOT* is not persuasive; that legislation did not amend section 203(b)(2) of the Act. In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub.L. 106-95 (November 12, 1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to that Act, to create special waiver provisions for certain physicians. Because Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*, counsel has not established that the NCLBA indirectly implies a similar legislative change.

Counsel repeatedly mentions the petitioner's "numerous publications," claiming that they "were put to use and propagated in the United States of America, Germany, Japan and the Philippines." As discussed previously, the record establishes the publication of the petitioner's research work, but it does not establish that such work has had a significant impact on the field. Furthermore, there is no credible evidence that the petitioner continues to engage in published research; the most recent evidence he offered to support that claim was a six-year-old electronic mail message in which his collaborator expressed a general hope to work with the petitioner again in the future.

Counsel cites a 2010 Department of Education report, *ESEA Blueprint for Reform*,[1] and acknowledges:

> The U.S. Department of Education's finding that meeting the NCLB Act's requirements for the "highly qualified" standard "does not predict or ensure that a teacher will be successful at increasing student learning" because while the NCLB requirements set minimum standards for entry into teaching of core academic subjects, they have not

[1] The quoted portion is available online at http://www2.ed.gov/policy/elsec/leg/blueprint/great-teachers-great-leaders.pdf (printout added to the record May 2, 2013).

> driven strong improvements in what matters most: the effectiveness of teachers in raising student achievement which demonstrates that teacher effectiveness contributes more to improving student academic outcomes than any other school characteristic.

The cited report contradicts and undermines counsel's assertion in the same brief that Congress superseded *NYSDOT* by defining the term "Highly Qualified Teacher" in the NCLBA, and that the petitioner should receive the waiver because he meets that definition.

Counsel maintains that the petitioner's "proven success as [a] Mathematics Teacher" demonstrates his eligibility for the waiver. The record shows that the petitioner is competent and well-regarded by his peers and students, but it does not show that the petitioner has had, or likely will have, a significant impact outside of the school where he works at any given time. Counsel has not offered sufficient support for the contention that *NYSDOT* should not apply to experienced math teachers.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.